%13-11-2006

+Present: Mr.Sanjeev Sachdeva for the appellant.
Mr.Vinod Tyagi for respondent No.1.
Mr. Atul Bhuchar for respondents 2 (c) and (e)

* FAO No.454/2003.

No application has been made by the appellant despite having acquired the knowledge about the death of respondent No.2 on 24th August, 2005. Learned counsel for the appellant seeks adjournment on the ground that he has not been receiving instructions from the appellant but I am not inclined to adhere such request particularly when the appellant had the knowledge about the death of respondent No.2 way back on 24th August, 2005. Accordingly the appeal abates. The appeal is dismissed as having been abated.

November 13, 2006
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H.R.MALHOTRA, J

CM 4354/07 O-22 R-4 filed by L.Rs

Signature Not Verified
Digitally Signed By:AMULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 454/2003

EXCEL INDUSTRIES LTD. ..... Appellant
Through Mr.Harish Katyal, Advocate

Versus

RAMESHWAR PAL NANDA & ORS. ..... Respondent
Through Mr.Vinod Tyagi, Advocate for R-1.
Mr.Harish Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

ORDER
% **03.12.2010**

CM No.4355/2007

1. This is an application under Section 5 of the Limitation Act for condonation of delay in filing the application under Order XXII Rule 4 r/w Section 151 CPC for setting aside the abatement of appeal and for bringing on record the legal heirs of the deceased respondent No.2(b) – Yashpal Nanda.

2. The facts giving rise to filing of the present application is that after the death of respondent No.2(b) Yashpal Nanda, an order was passed by this Court holding that the appeal stands abated. The relevant order dated 13.11.2006 reads as under:-

> "No application has been made by the appellant despite having acquired the knowledge about the death of respondent No.2 on 24th August, 2005. Learned counsel for the appellant seeks adjournment on the ground that he has not been receiving instructions from the appellant but I am not inclined to adhere such request particularly when the appellant had the knowledge about the death of respondent No.2 way back on 24th August, 2005.

Accordingly the appeal abates. The appeal is dismissed as having abated."

3. It would also be relevant to take note of the order dated 24.08.2005, which reads as under:-

"24.08.2005

Present: Mr.Sanjeev Sachdeva for appellant
Mr.Atul Bhuchar for respondent 2 & 2(b)

It is pointed out by learned counsel for respondent No.2 and 2(b) that respondent No.2(b) has died on 11.02.2005. Learned counsel for the appellant seeks time to make appropriate application for substitution of LRs of respondent No.2(b).

Renotify on 4th January, 2005."

4. It is apparent from the aforesaid order that the information about the death of respondent No.2(b) -Yashpal Nanda was given by the learned counsel appearing for the respondent on 24.08.2005 itself. This order dated 24.08.2005 also goes to show that even the date of death of Yashpal Nanda was known to the learned counsel for the appellant as he was appearing in the matter on that day.

5. In these circumstances, the limitation for filing an application to bring on record the LRs of the said deceased started form 11.02.2005. The period of limitation was 90 days and the period of setting aside the abatement was further 60 days. However, till 16.11.2006, no such application was filed. In fact, the application has been filed on 2.1.2007 registered as CM No. 4354/2007 along with the aforesaid application for condonation of delay.

6. The ground given by the appellant for condoning the delay is that the information given on 24.08.2005 was not complete inasmuch as, the exact date of death of respondent No.2(b) was not supplied, which is contrary to record as the exact date of death was intimated on

24.08.2005 itself as 11.02.2005.

7. Further ground taken is that the appellants were not aware of the names and addresses of the legal heirs of the deceased which they found with great difficulty later on. However, there is no explanation as to why a request was not made to learned counsel for the deceased respondent to supply the names and addresses of the legal heirs of the deceased respondent or as to why no effort was made through this Court.

8. The other ground taken is that even though Sh. B.S.Sherawat continued to remain their main counsel, they also engaged Sh.Sanjeev Sachdeva as their advocate. It is also stated that Sh.B.S.Sherawat suffered a stroke and became seriously ill and could not attend to legal work and as such, could not get in touch with the appellant and get the application signed and as such the application could not be filed in the court. In these circumstances, the appeal was stated to have been abated as per the order dated 13.11.2006.

9. In this regard, admittedly, the appellant has also engaged another counsel, namely, Sh.Sanjeev Sachdeva who has started appearing in this matter right w.e.f. 10.08.2004. Thereafter, Sh.B.S.Sherawat never appeared in this case. Even the order dated 13.11.2006 was passed after one year and after appearance of Sh.Sanjeev Sachdeva for several dates and also after intimation regarding the death of respondent No.2(b) was given in this Court on 24.08.2005 and therefore, non-appearance of Sh.B.S.Sherawat on account of suffering a stroke or becoming seriously ill is of no consequence and does not provide any good ground for condoning the delay.

10. The application for setting aside the abatement of appeal has been opposed by the respondent, who has filed a reply.

11. Taking into consideration the circumstances, which have been

pointed out by the appellant in the application for condonation of delay in filing an application under Order XXII Rule 4 r/w Section 151 CPC, I am of the view that the application is without any merit. The same is accordingly dismissed.

CM No.4354/2007

This is an application under Order XXII Rule 4 r/w Section 151 CPC for brining on record the legal heirs of the deceased respondent No.2(b).

In view of the orders passed in CMNo.4355/2007, this application stands dismissed.

CM No.15486/2009 & C.M.16814/2009

Dismissed as infructuous.

MOOL CHAND GARG,J

DECEMBER 03, 2010
dc